

Fax (707) 725-7610 621 11th Street P.O. Box 545 Fortuna, California 95540

March 11, 2005

Harry Hardin  
Eel River Disposal  
P.O. Box 266  
Fortuna, CA 95540

**Subject: Eel River Disposal – Amendment of the Franchise Agreement with the City of Fortuna**

Dear Mr. Hardin:

This letter is in response to our last telephone discussion on Wednesday, March 9<sup>th</sup>.

It is my understanding that you agreed with all the proposed amendments to the Eel River Disposal Solid Waste And Curbside Recycling Franchise Agreement (Agreement) that I sent to you via letter dated March 4<sup>th</sup> and are restated again in this letter. However, you requested an increase in the rate of \$1.50 per customer to offset the loss of revenue due to customers reducing both the size and/or number of cans that they use because they are recycling more materials by using the single stream totes.

Instead of \$1.50 increase across the board, we propose the following rate increase, which is intended to provide incentives to customers to use the single stream recycling totes to their maximum potential.

The City proposes the following amendments to the Agreement:

1. Provide a rate increase to offset the loss of revenue due to customers reducing both the size and/or number of cans that they use because they are recycling more materials by using the single stream totes. And increase the Franchise Fee to provide the City additional revenue to offset the costs to administer solid waste and recycling program.

The proposed changes are as follows:

- No change for the Bag Service
- \$1.00 increase for curbside recycling only
- No change for the 20-gallon can service.
- \$2.00 increase for the 32-gallon can service.

The specific rate changes are shown in the attached Exhibits A, B, and C.

**Mr. Harry Hardin**

**Subject: Eel River Disposal – Proposed Amendment of the Franchise Agreement**

**March 11, 2005**

**Page 2 of 4**

Section 2.03.11 of the Agreement would be changed to read as follows:

**2.03.11 Franchise Fee**

CONTRACTOR shall pay to CITY ~~two percent (2%)~~ **Add the following words:**  
[ **three percent (3%)**] of the gross amount received hereunder. Payment shall be on a quarterly basis with payment due on the 15th day of the month following the end of the quarter. CONTRACTOR shall pay a late fee at an annual percentage rate of 18% compounded daily, for each day that the franchise fee payment is past due. CONTRACTOR shall submit an annual report signed by a Certified Public Accountant certifying accuracy of gross amounts reported. CONTRACTOR shall keep record of the gross receipts obtained in the exercise of this Agreement. The CITY shall have the right to audit and examine such records. Audits shall be considered normal operational costs of CONTRACTOR's operation and done without additional charge.

2. Remove the requirement for the ownership of ERD (Contractor) to remain in the Hardin family and still allow the Agreement to be extended to December 31, 2018 if there are not uncured defaults.

Section 1.04 of the Agreement would be changed to read as follows:

**1.04 Term of this Agreement**

*The term of this Agreement shall be for a fourteen (14) year period beginning January 1, 1995 and terminating December 31, 2008.*

*Provided that CONTRACTOR has no uncured defaults for which notice has been given hereunder and the CONTRACTOR is still owned by the Hardin family, the Term will be extended for an additional ten (10) years ("Extended Term"), but each party may designate two items to be renegotiated for the Extended Term. At the end of the Extended Term, if this Agreement is extended further, the cost of the construction of the proposed transfer station building will be permanently removed from the disposal cost component of the rates to be charged if the proposed building is approved by the City Council for use as a transfer station. If the building referred to above is not approved for use as a transfer station, construction costs will not be considered in the disposal cost component.*

Mr. Harry Hardin

Subject: Eel River Disposal – Proposed Amendment of the Franchise Agreement

March 11, 2005

Page 3 of 4

3. Amend the curbside recycling conditions to change the curbside program to a “single-stream” curbside collection program. The City will purchase and provide the initial two thousand (2000<sup>1</sup>) recycling “totes” for the current recycling customers that are in the boundaries of the City.

Section 2.01.04.05 of the Agreement would be changed to read as follows:

**2.01.04.05 Recycling Collection**

*Recycling collection, processing and marketing consisting of at least weekly collection of curbside-placed recyclable materials: Aluminum cans, glass containers, plastic containers of #1 (PET) and #2 (HDPE natural and pigmented) plastic, newspaper, and cardboard Add the following words: [magazines, other plastics, bi-metal cans and other acceptable recyclable materials agreed upon by the City and ERD]. Additionally, CONTRACTOR shall provide public access to CONTRACTOR's facility where the above same materials may be dropped off. Changes in types of materials collected shall be made through agreement between CONTRACTOR and CITY. With mutual consent of both parties, list of items to be picked up for recycling may be changed.*

*Add the following words: [The City shall provide the initial two thousand (2000) single-stream recycling collection “totes” to the Contractor for distribution to the Contractors curb-side collection customers within the boundaries of the City. Thereafter the] CONTRACTOR shall provide uniform recycling containers approved by CITY to participating subscribers. Should subscribers need replacement containers, CONTRACTOR may require a ~~two dollar~~ Add the following words: [thirty two dollar (\$32)] deposit on each replacement container. The deposit shall be refunded to subscriber when containers, are returned to CONTRACTOR.*

*Subscribers participating in curbside recycling shall ~~separate~~ Add the following words: [deposit all recyclable] materials to be recycled ~~in such fashion~~ Add the following words: [into a single “tote” designated for recyclable materials] as the CONTRACTOR shall from time to time designate, with approval of the CITY.*

(Section 2.01.04.05 is continued to the next page)

---

<sup>1</sup> The value of these 2000 recycling “totes” to be provided by the City is estimated at approximately \$64,000

**Mr. Harry Hardin**

**Subject: Eel River Disposal – Proposed Amendment of the Franchise Agreement**

**March 11, 2005**

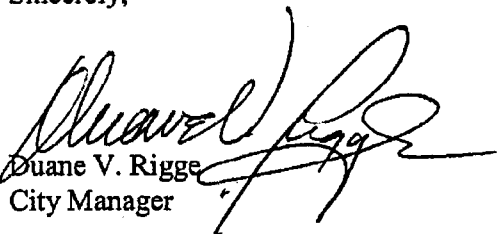
**Page 4 of 4**

*CONTRACTOR's marketing effort shall attempt to find markets for all collected recyclables, with due consideration for economics. Materials collected as recyclable shall not be landfilled without prior notice to and approval by CITY. Such approval shall not unreasonably be withheld if there is no readily available economic market for a particular material.*

*Recyclable materials that are set out by a customer, but are sufficiently contaminated with non-recyclable materials so as to render them unmarketable or create a risk of significantly contaminating the existing load of materials, may be rejected by CONTRACTOR without breach of this Agreement if notification is given to customer.*

I suggest we meet early next week and discuss this proposal. I would like to present these proposed amendments to the Agreement to the City Council for approval at the March 21<sup>st</sup> Council meeting.

Sincerely,

  
Duane V. Rigge  
City Manager

CC: City Council

# City of Fortuna

## Disposal Rates EXHIBIT A

59.06 PER TON *of*

**Bag Service**  
Regular  
Curbside Recycling

**1 Bag**  
\$1.05

**Monthly Rate**  
**20-Gallon Can**  
1xWeekly

**1 Can**  
\$2.61

Extra Can Pickup

\$1.00

**Monthly Rate**  
**32-Gallon Can**

1xWeekly  
2xWeekly

1 Can	2 Cans	3 Cans	4 Cans
\$4.18	\$8.36	\$12.54	\$16.71
\$8.36	\$16.71	\$24.00	\$32.00

**Monthly Rate**  
**Bins No Rental**

1xWeekly  
2xWeekly  
3xWeekly

1 Yard	1.5 Yard	2 Yard	3 Yard	4 Yard	6 Yard	8 Yard
\$26.38	\$39.56	\$52.75	\$79.13	\$105.50	\$158.26	\$211.01
\$52.75	\$79.13	\$105.50	\$158.26	\$211.01	\$316.51	\$422.02
\$79.13	\$118.89	\$158.26	\$237.39	\$316.51	\$474.77	\$633.03

NOTATIONS/PROPOSED CHANGES

11 MARCH 05

*[Signature]*

City of Fortuna  
Collection Service Rate  
EXHIBIT B

Bold numbers to be  
effective 7-1-04  
1.022 2.2% inc.

Bag Service  
Regular

1 Bag  
\$3.45

NO CHANGE

**\$3.53**

Curbside Recycling

\$3.77

ADD \$1.00 FOR NEW TOTAL OF  
\$4.85

**\$3.85**

Monthly Rate  
20-Gallon Can  
1xWeekly

1 Can  
\$10.75

NO CHANGE

**\$10.99**

Extra Can Pickup

\$2.76

**\$2.82**

Monthly Rate  
32-Gallon Can  
1xWeekly  
2xWeekly

1 Can	2 Cans	3 Cans	4 Cans
\$11.48	\$20.46	\$29.41	\$38.38
\$20.46	\$38.38	\$56.12	\$74.00

ADD \$2.00 TO  
EACH FOR A  
NEW TOTAL

<b>\$11.73</b>	<b>\$20.91</b>	<b>\$30.06</b>	<b>\$39.22</b>
<b>\$20.91</b>	<b>\$39.22</b>	<b>\$57.35</b>	<b>\$75.63</b>

\$13.73 \$22.91 \$32.06 \$41.22  
\$22.91 \$41.22 \$59.35 \$77.63

Monthly Rate  
Bins No Rental  
1xWeekly  
2xWeekly  
3xWeekly

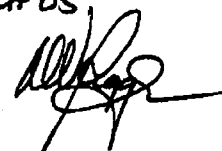
1 Yard	1.5 Yard	2 Yard	3 Yard	4 Yard	6 Yard	8 Yard
\$21.89	\$32.08	\$42.23	\$57.70	\$71.09	\$115.35	\$142.10
\$43.73	\$64.14	\$84.48	\$114.63	\$142.17	\$230.64	\$284.14
\$65.62	\$98.18	\$126.74	\$173.07	\$213.24	\$345.99	\$426.31
<b>\$22.37</b>	<b>\$32.77</b>	<b>\$43.16</b>	<b>\$58.97</b>	<b>\$72.66</b>	<b>\$117.80</b>	<b>\$145.23</b>
<b>\$44.69</b>	<b>\$65.85</b>	<b>\$86.34</b>	<b>\$117.15</b>	<b>\$145.30</b>	<b>\$235.71</b>	<b>\$290.38</b>
<b>\$67.06</b>	<b>\$98.30</b>	<b>\$129.53</b>	<b>\$176.88</b>	<b>\$217.93</b>	<b>\$353.60</b>	<b>\$435.69</b>

Bins With Rental  
Monthly Rate

1 Yard	1.5 Yard	2 Yard	3 Yard	4 Yard	6 Yard	8 Yard
\$12.64	\$14.27	\$16.10	\$19.84	\$23.20	\$30.30	\$36.59
<b>\$12.82</b>	<b>\$14.58</b>	<b>\$16.45</b>	<b>\$20.07</b>	<b>\$23.71</b>	<b>\$30.97</b>	<b>\$37.39</b>

NOTATIONS/ PROPOSED CHANGES

11 MARCH 05



City of Fortuna  
Combined Rate  
EXHIBIT C

EFFECTIVE 10-1-04

Bag Service  
Regular

1 Bag  
\$4.58 → NO CHANGE

Curbside Recycling

\$3.85 → \$4.85

Monthly Rate  
20-Gallon Can  
1x/Weekly

1 Can  
\$13.60 → NO CHANGE

Extra Can Pickup

\$3.82

Monthly Rate  
32-Gallon Can  
1x/Weekly  
2x/Weekly

1 Can	2 Cans	3 Cans	4 Cans	1 CAN	2 CANS	3 CANS	4 CANS
\$15.91	\$29.27	\$42.59	\$55.94	\$17.91	\$31.27	\$44.59	\$57.94
\$29.27	\$55.94	\$81.35	\$107.63	\$31.27	\$57.94	\$83.36	\$109.63

Monthly Rate  
Bins No Rental  
1x/Weekly  
2x/Weekly  
3x/Weekly

1 Yard	1.5 Yard	2 Yard	3 Yard	4 Yard	6 Yard	8 Yard
\$48.75	\$72.33	\$95.91	\$138.10	\$178.16	\$276.14	\$358.24
\$97.44	\$144.68	\$191.84	\$278.41	\$356.31	\$552.23	\$712.41
\$146.19	\$216.99	\$287.76	\$414.26	\$534.44	\$828.37	\$1,068.72

Bins With Rental  
Monthly Rate

1 Yard	1.5 Yard	2 Yard	3 Yard	4 Yard	6 Yard	8 Yard
\$12.92	\$14.58	\$16.45	\$20.07	\$23.71	\$30.97	\$37.39

HARLAND LAW FIRM LLP Fax: 707 445 2961

Mar 23 2005 13:30

P.02

## The Harland Law Firm LLP

ATTORNEYS AT LAW

A LIMITED LIABILITY PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

822 H Street  
Eureka, California 95501

(707) 444-8281

Facsimile: (707) 445-2981

E-Mail: [ramith@harlandlaw.com](mailto:ramith@harlandlaw.com)

JAMES A STE  
GERALD R. HARLAND  
ALLISON G. JACKSON  
GERI ANNE JOHNSON  
CAROL J. MARTINEZ  
RICHARD SMITH  
JOHN W. WARREN, INC.,

\* A PROFESSIONAL CORPORATION

OTHER OFFICE:  
884 MAIN STREET  
FORTUNA, CA 95540  
(707) 728-4428  
FAX: (707) 728-8738

March 23, 2005

Duane Riggs  
City Manager - City of Fortuna  
P.O. Box 545  
Fortuna, California 95540

Re: Eel River Disposal Proposed Franchise Amendments  
My file No. 0935 bc

Dear Duane:

This is to respond to your letter of March 11, 2005. In considering this response, I request that you again review Pat Stoll's December 15, 2004 letter to you and the financial calculations that he made at your request to determine the new cost of instituting a single stream recycling program.

ERD is a business and if it provides the public with a needed new service it is entitled to be paid at a rate that pays for the service and provides a reasonable profit. The whole point of our discussions has been to raise enough money to pay for this new program. Your proposal would increase the fees for all large cans by \$2 and leave the price for the smaller cans unchanged. While it is commendable to take steps to urge recycling, and the pricing that you have proposed will encourage customers to use the toters and get the fee break from the smaller cans, there is little justification for the economic outcome that you have proposed if it causes large numbers of customers to avoid the rate increase by using smaller cans resulting in ERD raising an insufficient amount to pay for this new program.

There is no way to know how many people will avoid the increased fee for the new program by dropping container sizes. This risk is particularly great because the City, very likely and properly, will urge people to take advantage of the new single stream recycling because it offers the opportunity to drop down in can size and obtain substantial savings, including avoiding the new \$2 fee.

Assuming that the City is unwilling to guarantee sufficient collections to pay for the new service, a fee structure that increases large cans by \$1.50 and the smaller containers by \$1.00 would somewhat reduce this risk and would be acceptable to ERD provided: (1) that the Hardin Family restriction is removed from paragraph 1.04

MANLAND LAW FIRM LLP Fax: 707 445 2961

Mar 23 2005 12:30

P.03

March 23, 2005  
Page 2

(something that the City has said should be done independent of this process because the imposition of this restriction was unfair) and (2) the extended term under paragraph 1.04 is changed to end on December 31, 2023. In addition, the additional materials to be recycled that you have suggested be added to paragraph 2.01.04.05 is acceptable as a part of this overall agreement.

You have also proposed an increase in the gross revenues franchise fee by 1% which would be passed on to the rate payers as a new rate increase. Since 2000 the City has been imposing a \$1.15/ton fee on the rate payers. This fee was for the specific purposes of \$.23/ton for solid waste administration, \$.20/ton for installing curb, gutter and sidewalk near the transfer station, \$.14/ton for litter abatement near the transfer station, \$.08/ton for the cost of City solid waste enforcement program and \$.50/ton for a City household hazardous waste program. The curb, gutter and sidewalk is in and was paid for by either property owners or some other fund (but not this fee). There is no litter abatement program (nor litter) near the transfer station, there is no solid waste enforcement program and there is no household hazardous waste program.

After a fee is enacted, any member of the public may request an audit to determine, "whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency." [Gov Cd 66023]. As a result, ERD would consent to a 1% increase in franchise fees if that is a customer pass through and the 2000 fees are ended. This would have a positive impact on what the rate payers pay and would end the collection of a fee for which the service has not occurred.

Sincerely,



Richard Smith

RAS/ds